

By: Ellis

S.B. No. 149

A BILL TO BE ENTITLED

AN ACT

relating to the availability of property insurance under the Fair Access to Insurance Requirements (FAIR) Plan.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 2211.001, Insurance Code, is amended by amending Subdivisions (6), (7), and (8) and adding Subdivisions (1-b), (6-a), (6-b), and (7-a) to read as follows:

(1-b) "Commercial property insurance" means coverage provided in a commercial fire and allied lines insurance policy against loss incurred to real or tangible business personal property, including loss of business income due to direct physical loss of or damage to property at the covered premises. The term includes farm and ranch insurance and farm and ranch owners insurance.

(6) "Net direct premiums" means gross direct written premiums less return premiums on canceled contracts, regardless of reinsurance assumed or ceded, written on residential and commercial property under this chapter.

(6-a) "Participating insurer" includes an insurer writing property insurance.

(6-b) "Property insurance," except as otherwise provided by this chapter, includes both commercial property insurance and residential property insurance.

(7) "Residential property insurance" means the

1 coverage provided by a homeowners insurance policy or [7]  
2 residential fire and allied lines insurance policy[, ~~or farm and~~  
3 ~~ranch owners insurance policy~~] against loss incurred to real or  
4 tangible personal property at a fixed location.

5 (7-a) "Supplementary rating information" means any  
6 manual, rating schedule, plan of rules, rating rules,  
7 classification systems, territory codes and descriptions, rating  
8 plans, and other similar information used by the association to  
9 determine the applicable premium for an insured. The term includes  
10 factors and relativities, including increased limits factors,  
11 classification relativities, deductible relativities, premium  
12 discount, and other similar factors and rating plans.

13 (8) "Underserved area" or "underserved areas" means an  
14 area or areas designated as underserved by the commissioner under  
15 this chapter by rule.

16 SECTION 2. Section 2211.051, Insurance Code, is amended to  
17 read as follows:

18 Sec. 2211.051. ESTABLISHMENT OF FAIR PLAN. (a) The  
19 commissioner may establish a Fair Access to Insurance Requirements  
20 Plan to deliver:

21 (1) residential property insurance to residents of  
22 this state in underserved areas designated under Section  
23 2211.152(b), if the commissioner determines, after a public  
24 hearing, that:

25 (A) [~~(1)~~] in all or any part of the state,  
26 residential property insurance is not reasonably available in the  
27 voluntary market to a substantial number of insurable risks; or

1                    (B) [~~(2)~~] at least 25 percent of the applicants  
2 to the residential property market assistance program who are  
3 qualified under that program's plan of operation have not been  
4 placed with an insurer in the preceding six months; and

5                    (2) commercial property insurance to those persons  
6 within a group or groups that share similar risk characteristics  
7 and who have an insurable interest in commercial property in  
8 underserved areas designated under Section 2211.152(c), if the  
9 commissioner determines, after a public hearing, that in all or any  
10 part of the state commercial property insurance is not reasonably  
11 available in the voluntary market to that group or groups.

12                    (b) The commissioner has sole discretion to designate:

13                    (1) the underserved areas of this state, as designated  
14 under Section 2211.152(c), in which the FAIR Plan may provide  
15 commercial property insurance; and

16                    (2) those persons and risk characteristics that  
17 establish a group or groups whose members share similar risk  
18 characteristics for the purposes of this chapter, including by  
19 defining a group as including all persons seeking commercial  
20 property insurance.

21                    (c) In establishing eligibility for commercial property  
22 insurance, the commissioner may consider:

23                    (1) whether such a determination creates an adverse  
24 impact to the association's exposure; and

25                    (2) any other factors the commissioner considers  
26 relevant.

27                    SECTION 3. Section 2211.054, Insurance Code, is amended to

read as follows:

Sec. 2211.054. CONTENTS OF PLAN OF OPERATION. The plan of operation must:

(1) provide for a nonprofit association to issue ~~[residential]~~ property insurance under this chapter and distribute the losses and expenses in writing that insurance in this state;

(2) provide that all insurers that write ~~[residential]~~ property insurance shall participate in the association in accordance with Sections 2211.101(b) and (c);

(3) provide that a participating insurer is entitled to receive credit in accordance with Section 2211.101(d);

(4) provide for the immediate binding of eligible risks;

(5) provide for the use of premium installment payment plans, adequate marketing, and service facilities;

(6) provide for the establishment of reasonable service standards;

(7) provide procedures for efficient, economical, fair, and nondiscriminatory administration of the association;

(8) provide procedures for determining the net level of participation required for each insurer in the association;

(9) provide for the use of deductibles and other underwriting devices;

(10) provide for assessment of all members in amounts sufficient to operate the association;

(11) establish maximum limits of liability to be placed through the program;

(12) establish commissions to be paid to the insurance agents submitting applications;

(13) provide that the association issue policies in the association's own name;

(14) provide reasonable underwriting standards for determining insurability of a risk;

(15) provide procedures for the association to assume and cede reinsurance; and

(16) provide any other procedure or operational matter the governing committee or the commissioner considers necessary.

SECTION 4. Section 2211.056(a), Insurance Code, is amended to read as follows:

(a) The association shall file with the commissioner for approval the proposed rates and supplementary rating [~~supplemental rate~~] information to be used in connection with the issuance of insurance policies or endorsements.

SECTION 5. Subchapter B, Chapter 2211, Insurance Code, is amended by adding Section 2211.060 to read as follows:

Sec. 2211.060. COMMERCIAL PROPERTY INSURANCE LIABILITY LIMITS. (a) Except as provided by Subsections (c) and (d), maximum liability limits for the coverage on a single insurable commercial property may not exceed \$3,200,000 for:

(1) a structure; and

(2) the corporeal movable property located in that structure, and as an extension of coverage, away from those premises, as provided under the policy.

(b) This section does not apply to insurable commercial

property that is:

(1) owned by, and at least 75 percent of which is occupied by, a governmental entity; or

(2) not owned by, but is wholly and exclusively occupied by, a governmental entity.

(c) Not later than September 30 of each year, the governing committee shall propose inflation adjustments to the maximum liability limits imposed under Subsection (a) in increments of \$1,000, rounded to the nearest \$1,000, based on an index that the governing committee determines accurately reflects changes in the cost of construction or commercial property values in the relevant area.

(d) The governing committee may propose additional increases in the maximum liability limits as the governing committee determines necessary to implement the purposes of this chapter.

(e) The commissioner shall approve the inflation adjustments and proposed additional increases, with or without modifications, or disapprove the adjustments and proposed additional increases.

SECTION 6. Section 2211.101, Insurance Code, is amended to read as follows:

Sec. 2211.101. COVERAGE PROVIDED TO INSURED IN UNDERSERVED AREA. (a) In accordance with the plan of operation, the association shall develop and administer a program for participation by each insurer that writes ~~[residential]~~ property insurance in this state.

1           (b) Except as provided by this subsection, each insurer, as  
2 a condition of the insurer's authority to engage in the business of  
3 ~~[residential]~~ property insurance in this state, shall participate  
4 in the association in accordance with this chapter, including  
5 participating in the association's assessments in the proportion  
6 that the insurer's net direct property insurance premiums written  
7 in this state during the preceding calendar year bear to the  
8 aggregate net direct property insurance premiums written in this  
9 state by all participating insurers. The Texas Windstorm Insurance  
10 Association established by Chapter 2210 may not participate in the  
11 association for any purpose.

12           (c) An insurer's participation under Subsection (b) in the  
13 association's assessments must be determined in accordance with the  
14 association's plan of operation ~~[residential property statistical~~  
15 ~~plan adopted by the commissioner]~~.

16           (d) A participating insurer is entitled to receive credit  
17 for similar property insurance voluntarily written in an  
18 underserved area. The participation of an insurer entitled to  
19 receive credit under this subsection must be reduced in accordance  
20 with the plan of operation.

21           SECTION 7. Section 2211.104, Insurance Code, is amended by  
22 amending Subsection (c) and adding Subsection (f) to read as  
23 follows:

24           (c) The insurer shall compute the amount of the surcharge  
25 under Subsection (b) as a uniform percentage of the premium on each  
26 policy described by Subsection (b). The percentage must be equal to  
27 one-third of the ratio of the amount of the participating insurer's

assessment or service fee payment to the amount of the insurer's direct written ~~[earned]~~ premiums, as reported to the department in the insurer's financial statement for the calendar year preceding the year in which the assessment or service fee payment is made so that, over the three-year period, the aggregate of all surcharges by the insurer under this section is at least equal to the amount of the assessment or service fee payment.

(f) Notwithstanding Subsections (a)-(d), if the public securities are issued as authorized by Subsection (a)(1), the commissioner may establish a schedule providing for collection of the service fee over the full term of the securities and limiting insurers to collecting the service fee in accordance with that schedule.

SECTION 8. Section 2211.151, Insurance Code, is amended to read as follows:

Sec. 2211.151. MANDATORY COVERAGE PROVIDED TO CERTAIN INSUREDS. (a) As authorized by the commissioner under Section 2211.051(a)(1), the ~~[The]~~ association shall make residential property insurance available to each applicant in an underserved area whose property is insurable in accordance with reasonable underwriting standards but who, after diligent efforts, is unable to obtain residential property insurance through the voluntary market, as evidenced by two declinations from insurers authorized to engage in the business of, and writing, residential property insurance in this state.

(b) As authorized by the commissioner under Section 2211.051(a)(2), the association shall make commercial property



1 insurance available to each applicant who:

2 (1) has an insurable interest in real or tangible  
3 commercial property that is insurable in accordance with reasonable  
4 underwriting standards and located at a fixed location in the area  
5 designated by the commissioner under Section 2211.051(a)(2);

6 (2) shares the risk characteristics of the group  
7 designated by the commissioner under Section 2211.051(a)(2); and

8 (3) after diligent efforts, is unable to obtain  
9 commercial property insurance through the voluntary market, as  
10 evidenced by two declinations from insurers authorized to engage in  
11 the business of, and writing, that commercial property insurance in  
12 this state.

13 SECTION 9. Section 2211.152, Insurance Code, is amended to  
14 read as follows:

15 Sec. 2211.152. DESIGNATION OF AREA AS UNDERSERVED. (a) The  
16 commissioner by rule shall designate the areas determined to be  
17 underserved.

18 (b) In determining which areas to designate as underserved  
19 for residential property insurance, the commissioner shall  
20 consider the factors specified in Section 2004.002.

21 (c) In determining which areas to designate as underserved  
22 for commercial property insurance, the commissioner shall  
23 consider:

24 (1) whether commercial property insurance is not  
25 reasonably available to those persons within a group or groups that  
26 share similar risk characteristics and who have an insurable  
27 interest in commercial property in the area; and

1           (2) any other factors the commissioner considers  
2 relevant.

3           SECTION 10. Section 2211.153, Insurance Code, is amended to  
4 read as follows:

5           Sec. 2211.153. INSPECTION BUREAU. The association, with  
6 the approval of the commissioner, shall designate one or more  
7 organizations as the inspection bureau. The inspection bureau  
8 shall:

9           (1) make inspections to determine the condition of a  
10 property for which [~~residential~~] property insurance is sought; and

11           (2) perform other duties authorized by the association  
12 or the commissioner.

13           SECTION 11. Sections 2211.154(a) and (c), Insurance Code,  
14 are amended to read as follows:

15           (a) A person who has an insurable interest in real or  
16 tangible personal property at a fixed location in an underserved  
17 area and who, after diligent effort, is unable to obtain  
18 [~~residential~~] property insurance, as evidenced by two current  
19 declinations from insurers authorized to engage in the business of  
20 [~~residential~~] property insurance in this state and actually writing  
21 the [~~residential~~] property insurance applied for in this state, is  
22 entitled on application to the association to an inspection and  
23 evaluation of the property by representatives of the inspection  
24 bureau.

25           (c) Promptly after the application is received, the  
26 inspection bureau shall make an inspection and file an inspection  
27 report with the association. The inspection report must be made

1 available to the applicant on request. The association shall  
2 prescribe the manner and scope of the inspection and inspection  
3 report for [~~residential~~] property in accordance with the plan of  
4 operation.

5 SECTION 12. Section 2211.155, Insurance Code, is amended to  
6 read as follows:

7 Sec. 2211.155. INSPECTION RESULTS; REINSPECTION. (a) If,  
8 after an inspection, the inspection bureau determines that  
9 [~~residential~~] property meets the underwriting standards  
10 established in the plan of operation, the applicant must be  
11 informed in writing of that determination and the association shall  
12 issue a policy or binder. If the [~~residential~~] property does not  
13 meet the underwriting standards, the applicant must be informed in  
14 writing of the reason for the failure of the [~~residential~~] property  
15 to meet the standards.

16 (b) If, at any time, an applicant whose [~~residential~~]  
17 property did not meet the underwriting standards makes improvements  
18 to the property or the property's condition that the applicant  
19 believes are sufficient to make the property meet the standards, an  
20 inspection bureau representative shall reinspect the property on  
21 request. In any case, the applicant is eligible for one  
22 reinspection on or before the 60th day after the date of the initial  
23 inspection.

24 (c) If, on reinspection, the [~~residential~~] property meets  
25 the underwriting standards, the applicant must be informed in  
26 writing of that fact and the association shall issue a policy or  
27 binder.

SECTION 13. Section 2211.201, Insurance Code, is amended to read as follows:

Sec. 2211.201. PURPOSE. The legislature finds that issuing public securities to provide a method to raise funds to provide ~~[residential]~~ property insurance in this state through the association is to benefit the public and to further a public purpose.

SECTION 14. Section 2211.209(e), Insurance Code, is amended to read as follows:

(e) As a condition of engaging in the business of insurance in this state, a participating insurer agrees that, if the insurer leaves the property insurance market in this state, the insurer remains obligated to pay the insurer's share of the service fee assessed under this section until the public securities are retired. The amount assessed against an insurer under this subsection must be:

(1) proportionate to the insurer's share of the property insurance market~~[, including residential property insurance,]~~ in this state as of the last complete reporting period before the date the insurer ceases to engage in the property insurance business in this state; and

(2) based on the insurer's gross premiums for property insurance~~[, including residential property insurance,]~~ for the insurer's last reporting period.

SECTION 15. Not later than December 1, 2009, the governing committee of the FAIR Plan shall amend the plan's plan of operation to reflect the changes in law made by this Act. On January 1, 2010,

S.B. No. 149

1 the FAIR Plan shall begin issuing commercial property insurance in  
2 accordance with the plan of operation.

3 SECTION 16. This Act takes effect September 1, 2009.